



# Inaugural Scottish Sentencing Research Symposium

Hosted by the Scottish Sentencing Council, the Sentencing  
Academy, and the University of Glasgow on 24 November 2023

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#SSCsymposium

## Contents

<b>Foreword by the Rt Hon Lord Matthews .....</b>	<b>1</b>
<b>Introduction .....</b>	<b>3</b>
<b>The Scottish Sentencing Council – research work .....</b>	<b>4</b>
<b>Panel 1: Sentencing and young people.....</b>	<b>8</b>
<b>Panel 2: Sentencing and mental health.....</b>	<b>13</b>
<b>Panel 3: Community sentencing and rehabilitation .....</b>	<b>19</b>
<b>Conclusion.....</b>	<b>26</b>
<b>Biographies .....</b>	<b>27</b>
<b>Hosts .....</b>	<b>34</b>

## Foreword by the Rt Hon Lord Matthews



I am delighted to introduce this report on the inaugural Scottish Sentencing Research Symposium, hosted by the Scottish Sentencing Council, the Sentencing Academy, and the University of Glasgow.

I had the great privilege of standing in for the Lord Justice Clerk and chairing this event, welcoming guests from across the United Kingdom for a cross-jurisdictional discussion on sentencing and research.

Sentencing is a complex endeavour; even seemingly straightforward matters may raise profound questions. As the then Lord Justice Clerk, Lord Carloway, noted in the 2014 case of *Ferguson v HMA*<sup>1</sup>, quoting Lord Gill's earlier comments in *Gemmell v HMA* from 2012<sup>2</sup>:

*Sentencing is 'a delicate art based on competence and expertise' rather than an exact science.*

The aim of the research symposium was to improve awareness and understanding of the delicate art of sentencing, and the ways in which this can be informed by research and evidence, in relation to three important areas: sentencing and young people; sentencing and mental health; and community sentencing and rehabilitation.

I was struck by the breadth of knowledge and experience at this event from within and outwith Scotland. A variety of individuals participated from across the criminal justice system, government and academia: members of the judiciary, representatives from sentencing bodies, practitioners, medical professionals, academics, policy professionals, and other experts.

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<sup>1</sup> [2014] HCJAC 19, at para 109.

<sup>2</sup> [2011] HCJAC 129, at para 59.

It resulted in a most informative and stimulating discussion on the work of the Scottish Sentencing Council, sentencing and young people, sentencing and mental health, and community sentencing and rehabilitation.

The Council is an independent advisory body, made up of judicial, legal, and lay members, with three statutory objectives: to promote consistency in sentencing; to assist in the development of sentencing policy; and to promote greater awareness and understanding of sentencing. The contribution of academic work to our objectives, and its importance to improved policy-making and practice in justice and public confidence more generally, has been vital. Events such as this research symposium allow us to showcase and, where appropriate, amplify research, which might promote consistency in sentencing as well as greater awareness and understanding of sentencing.

It is the Council's hope that this report will help to amplify some of the important research work being undertaken in these vital areas, stimulate further discussion, and play a role in informing policy development. The [videos](#) of the speakers are also available to watch on our website and social media; I encourage everyone to watch and share this important work.

On behalf of the Council, I would like to extend once again my appreciation to the chairs and speakers at this research symposium for sharing with us their professional knowledge and experience.

I would also like to thank in particular my judicial and council colleagues from England and Wales, and Northern Ireland for joining us and our co-hosts, the Sentencing Academy and the University of Glasgow.

Finally, I am most grateful to all of the participants for giving us their time and attention.

**Lord Matthews**  
**Senator of the College of Justice and**  
**member of the Scottish Sentencing Council**

## Introduction

1. The Scottish Sentencing Council, the Sentencing Academy, and the University of Glasgow hosted the inaugural Scottish Sentencing Research Symposium on 24 November 2023 at the Wolfson Medical School, University of Glasgow.
2. The event was chaired by Lord Matthews, Senator of the College of Justice and member of the Scottish Sentencing Council.
3. The aim of the symposium was to give an overview of the research work of the three hosts, showcase and amplify research in three key areas related to sentencing, and promote greater awareness and understanding of sentencing. The three key areas explored during the event were: sentencing and young people, sentencing and mental health, and community sentencing and rehabilitation
4. Each of the three areas involved a panel comprised of a chair and two speakers. Each speaker gave a presentation followed by a plenary discussion where the panel fielded questions from invited guests from a wide range of disciplines: judiciary, sentencing bodies, practitioners, medical professionals, academics, policy officers, and other experts.
5. To facilitate open discussions, the event was held in accordance with the [Chatham House Rule](#). The presentations of each speaker are publicly available, with their consent, on the Council's website and social media channels. This report is not intended to be a verbatim account of proceedings but rather to draw out some of the key themes of the research symposium.
6. The views expressed in the research symposium and in this report are those of the individual participants – they are not necessarily shared by the Council, or by other speakers or participants.

## The Scottish Sentencing Council – research work

7. Lord Matthews, Senator of the College of Justice and member of the Council, opened the symposium. He welcomed Dr Hannah Graham, senior lecturer in criminology at the University of Stirling and Council member, and Dr Nicole Vidal, the Council's Principal Research Officer, to give an overview of the research work of the Council.
8. Dr Graham began her presentation by discussing the work of the Council's [Research Committee](#) and how it plays a vital role in facilitating the Council's research programme. The committee ensures that all aspects of its work are shaped by reliable, robust, expert-driven, and evidence-informed research. It also supports the Council's research activities and ensures the successful delivery of the Council's research programme.
9. Dr Graham outlined how the Research Committee manages the research and commissioning framework on behalf of the Council. It reviews and assesses specifications for commissioned research; as well as evaluating tenders for commissioned research and speculative applications for funding. Throughout the lifespan of research projects, the committee oversees and provides support, ensuring their smooth progress, reviews outputs from the projects to ensure these are robust, and oversees the dissemination of the findings.
10. She provided information on the range of large and small-scale research initiatives undertaken by the Council, both commissioned and in-house research. These included public perception studies, using a combination of qualitative, quantitative, and mixed-methods. She gave the example of the [statutory offences of causing death by driving guideline](#), which was informed and shaped by various research methods, including a study that investigated [public perceptions](#) involving the families of victims; a [literature review](#) which examined existing evidence on sentencing in death by driving cases in Scotland and elsewhere in the UK, current sentencing practice, and knowledge around death by driving offences;

and a [national survey](#) which involved over one thousand participants and explored public attitudes towards sentencing in Scotland. One of the most interesting findings from that research was how public attitudes about sentencing become more nuanced, and start to align more closely with outcomes in real-life court cases, when consideration is given to all of the facts of the case.

11. Dr Graham discussed the ongoing review of the research framework, how it provides a structure for decision-making processes in research, outlines the Council's main areas of focus, provides guidance to those interested in submitting research proposals, and aids in the selection of research projects.
12. She provided information on the Council's website. It contains information about the Council's past, current and forthcoming work; guidelines; and the Council's open source education resources, including higher education teaching resources, video clips, and weekly facts, as well as research reports, literature reviews, consultations, focus group studies on specific offences with the public and members of the judiciary, and other sentencing-related work.
13. Dr Graham discussed how the Council is active on X (formerly known as Twitter), LinkedIn, Facebook, Instagram, and YouTube to engage with the public through providing information on sentencing, guidelines, and the work of the Council.
14. She explained the Council's [guideline development process](#) in detail and noted that it is evidence-based, taking into account the findings of research into the causes and impacts of offending behaviour; analysis of sentencing practice and appeal judgments; research into public perceptions and expectations of sentencing; and a wide range of engagement and consultation, including with victims' organisations and the general public. The Council draws on a range of data sources, such as statistical data on current sentencing practices, details regarding offence volumes, the number of different types of disposals, and average custodial sentence lengths.

15. Dr Graham set out the current research priorities of the Council: sexual offences, domestic abuse, sentence discounting, and unwarranted disparities in sentencing. She stated that the Council is nearing the consultation phase in respect of its guidelines on rape and indecent images of children. Further priorities of the Council include: public perceptions research into victim's views and experiences; public understanding of and attitudes towards environmental and wildlife offences; surveying judicial views regarding mental health and sentencing; and the monitoring and review of in-force guidelines, which the Council is required to undertake by law, beginning with a routine review of the sentencing young people guideline in accordance with the Council's agreed methodology.
16. Dr Graham introduced Dr Nicole Vidal. Dr Vidal discussed the criteria for in-house research, namely that significant in-house research projects will generally be granted approval by either the research committee or the Council if the necessary skills to undertake the work are already present within the team or can be acquired, and if appropriate to do so.
17. Dr Vidal provided information on the data used by the Council in its research. She highlighted the importance of evidence-based research, particularly ensuring that the perspectives and experiences of sentencers are included so that guidelines are informed by real-world scenarios and current practices. The Scottish Courts and Tribunals Service is statutorily obligated to provide data to the Council under the Criminal Justice and Licensing (Scotland) Act 2010. Data from the Scottish Government's annual national statistics in criminal proceedings are also used in tandem.
18. Dr Vidal spoke about how the Council formulates sentencing ranges. It is a process based on consideration of various factors such as relevant guideline judgments and binding case law; relevant legislation, including maximum and minimum sentences, powers of the court, and statutory presumptions relating to



sentencing; as well as current sentencing practice for the offences under consideration. These are drawn from a variety of sources: research conducted with the judiciary through interviews and surveys, statistical data, analysis of cases and appeals, members' experiences, and public consultation. It is an iterative process where ongoing engagement and testing assist in refining these findings.

19. She discussed the impact assessment for every guideline that the Council is required to produce; this must include an assessment of costs and benefits to which implementation of the guideline would be likely to give rise, and an assessment of the likely effect of the guideline on the criminal justice system, including consultation with criminal justice stakeholders. Dr Vidal also noted that the Council committed to undertaking reviews of offence and offender-specific guidelines after both one year in force and three years in force; the methodology for monitoring and review was agreed a year ago and is on the website.
  
20. After the presentations, the group answered questions, including, among other things, on the role of the Council in respect of the position after sentencing, and whether there is scope for any longitudinal studies; the group responded that the Council sometimes undertakes research in relation to the position post-sentencing where this has a bearing on its work, and that it may consider undertaking longitudinal studies in the future but that this would be dependent on long term funding arrangements.

## Panel 1: Sentencing and young people

21. The first panel was chaired by Dr Jay Gormley researcher at the University of Glasgow. Dr Gormley invited Dr Nina Vaswani, senior research fellow at the Children and Young People's Centre for Justice, to talk about children and young people and their experience of youth courts. She provided an overview of the policy landscape of children's rights in Scotland and internationally. She then discussed the distinct issue of young adults – those aged 18 to around 24 – and their over-representation in the criminal justice system. They receive poorer outcomes and are more likely to be reconvicted; they therefore require special attention as they are often caught in the space between protection of children, and opportunities and entitlements given to adults.
22. She outlined the provisions of the [Sentencing young people guideline](#), in particular emphasising the fact that the exercise of sentencing a young person is different from that of sentencing an older person, due to the lower level of maturity and a greater capacity for change and rehabilitation.
23. Dr Vaswani noted that in Lanarkshire, Aberdeen, and Glasgow different arrangements for young people are already in place. She discussed the work of the [Children's and Young People's Centre for Justice](#) (CYCJ), the research they have undertaken, and the [Youth Court Blueprint](#) based on that research. The [Glasgow Youth Court](#) has been running since June 2021, for 16-24 year olds, with an emphasis on problem-solving and structured deferred sentencing (SDS)<sup>3</sup> with regular review by a sheriff. The Youth Justice Improvement Board approved the blueprint as a guide for what local authorities should consider when setting up their own youth court. Regional variation is possible as consistency rather than uniformity is the aim.

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<sup>3</sup> Structured deferred sentences provide a structured intervention for individuals upon conviction and prior to final sentencing: <https://www.gov.scot/publications/structured-deferred-sentences-scotland-guidance/pages/1/>.

24. The main recommendation is that all children under 18 should be remitted to the Children's Hearings System wherever possible. There is however an underuse of remittal to the Children's Hearing System. She stated that following the introduction of the Glasgow Youth Court there has been an increase in SDS and a reduction in the use of higher tariff community payback orders; there has also been a reduction in diversion but this may be related to the Covid-19 period. She cautioned that footfall to youth courts should not be increasing at the expense of lower tariff options.
25. Dr Vaswani set out further recommendations in respect of the layout and venue to make it a more informal and inclusive venue, outside of traditional court rooms, with consideration of trauma-informed principles so that a young person can be included, supported, and able to be involved. She went on to discuss the right to privacy through possible closed court proceedings and to provide information on the people in the court and their role/purpose in order to reduce anxiety. While recommendations are that less formal attire should be worn, she stated that the research suggested consistency between sheriffs and the children knowing what to expect was more important. Young people should be able to actively participate and offered a referral to advocacy.
26. There should be simplified language and young people should be invited to demonstrate their understanding of the proceedings. The sheriff should routinely call upon the court-based or allocated social worker to provide an update on the young person and dedicated youth teams should be created to work within each youth court. All staff working within the youth court should take part in multi-agency training in relation to the rights, needs, and challenges facing young people as well as how to communicate, especially for those with speech, language, and communication needs.
27. Dr Vaswani gave information on further recommendations that all youth courts should cover the age range up to age 26 and continue to deal with young people

subject to youth court proceedings prior to their 26<sup>th</sup> birthday, and that all should be diverted to the youth court in the first instance so that they do not have to appear in an adult court. All offences should be fast-tracked into court to be dealt with as timeously as possible. She explained that all youth courts should emphasise the use of SDS where appropriate and support services should be available within the courts in order to get the supports in place quickly. She concluded that the success of the youth courts will depend upon continued review and continued monitoring and evaluation.

28. Dr Gormley introduced Professor Kathryn Hollingsworth, Professor of Law at Newcastle University, to speak about her research on children's rights and sentencing in England and Wales. She referenced youth justice statistics to show that there has been a decrease in the number of children sentenced in England and Wales but an increase in the representation within those figures of individuals from ethnic minorities. She discussed the approach of the [Sentencing Children and Young People guideline](#) developed by the Sentencing Council for England and Wales, which, she stated, emphasises the need to have regard to the prevention of offending and the welfare of the child or young person, have an individualistic approach with a focus on rehabilitation, and that custody should be used only as a last resort. There is a recognition in that guideline that it is important to avoid criminalising children unnecessarily, developmental age is of or at least as important as chronological age and welfare factors are of primary importance; it also draws attention to the over-representation of, and factors affecting, care experienced children and children from racialized minority groups.

29. Professor Hollingsworth referred to the judgment in the case of [ZA v R \[2023\] EWCA CRIM 596](#). It sets out that there should be a "root and branch" difference of approach when sentencing children and provides a checklist. The scheduling of court business should ensure sufficient time to prepare sentencing remarks that are age-appropriate; children and adult co-accused should be separately listed; the courtroom should be set up at the same level (child with parent); and

full sentencing notes should be prepared by the prosecution and defence, include guidelines, and address “material considerations in an individualistic way” for each accused. Judges should take a stepped approach to the guideline and, if the custody threshold is passed, then a youth rehabilitation order with intensive supervision and surveillance should be considered and reasons given if not.

30. She noted that the court referenced rule 25.16(7)(b)(iii) of the Criminal Procedure Rules, which requires judges to explain their sentence in a way that the offender can understand and that this means, when sentencing a child or young person, care needs to be taken to explain the sentence and the reasons for it to them in a way that they can easily grasp.

31. Professor Hollingsworth explained that she had undertaken research examining a number of questions relating to the communication of sentencing remarks: how children experience and make sense of communication in the court room, particularly during sentencing hearings; what children’s views are of the judge and judicial communication; and the way the judge communicates sentencing remarks to children. The qualitative study consisted of nine in-depth interviews with children lasting on average one hour and 26 minutes. The interviewees were also asked for their reflections on three examples of sentencing remarks, which each represented very different communicative styles.

32. She provided a number of examples of what interviewees had stated to her in her research. She discussed at length the anxiety and all-consuming fear of prison, which may make children’s ability to understand, communicate, and participate in proceedings more difficult. The conclusions of the study were that how the sentence is communicated, as well as the sentence outcome, is central to children’s perceptions of legitimacy. Specifically, children and young people valued communication that was caring; that recognised and reinforced their self-perception that they are not a ‘proper criminal’; and that recognised and gave effect to their status and rights as a child. She concluded that, overall, what was

most important to children and young people was the showing of and experiencing authentic kindness towards them.

33. The speakers fielded questions, chaired by Dr Gormley. There was some discussion over whether it was possible to have a closed court in all child or young person accused cases as it would be against the European Convention on Human Rights not to hold hearings in public but it was noted that Article 6 specifically allows for the exclusion of the public and press in hearings involving children. There was further discussion around the fact that resources and time are key requirements when trying to give children and young people a voice and, therefore, meaningful participation in the criminal justice process.
34. One of the audience members provided further information on a project in South Lanarkshire, where there was a dedicated judge for the young person, it was often a closed court, social workers had a greater role to play in court in terms of supporting the young person and communicating with the judge on their behalf (with their permission), and the accused was aware of what the report from the social worker said before they went to court. It was said to have changed the perception of justice on the part of the young person.
35. There was also discussion around whether members of the judiciary should be asking children or young people convicted of offences to write to them during their sentence and beyond to let them know how they get on. It was put forward that there may be a limit to providing that caring role, given time and resource limitations, as well a question over appropriateness. It was also raised that victims need to be given an opportunity to express themselves and also need support to do this. Questions were raised and there was discussion regarding the limitation of legal aid to support children and young people getting access to justice.

## Panel 2: Sentencing and mental health

36. Lord Colbeck, Senator of the College of Justice and member of the Scottish Sentencing Council, chaired the second panel, which focused on sentencing and mental health. He spoke about the complex relationship between offending and mental health, particularly the interaction between mental health and other factors such as substance misuse, homelessness, and social deprivation. He gave an overview of the work of the Council in the area of mental health. The Council has committed to carrying out research and engagement to support awareness-raising and other activity in this area and to help decide whether a guideline on the subject would be of assistance to the courts. In fulfilment of this, the Council held a roundtable discussion in 2019 involving attendees from across the criminal justice system with expertise in relation to mental health and welfare issues. A [report of the discussion](#) noted a number of areas where further consideration may be warranted. In terms of research, a [literature review](#) on mental health and sentencing was published in May 2022. The Council is also in the process of seeking the perspectives of the judiciary on the particular challenges around sentencing individuals with mental health issues; the findings will be considered next year.

37. Lord Colbeck introduced Professor Lindsay Thomson, Professor of Forensic Psychiatry at the University of Edinburgh, the State Hospital and Forensic Network, to give an overview of criminal justice and mental health systems. She stated that psychiatrists have powers at each stage of the criminal justice process, from the point of arrest through to final disposal of the case. No individual should be in the cells and not assessed if they have a mental disorder; no one should be unassessed, uncared for, and untreated. She spoke at length about the complex relationship between mental disorder and offending. If an individual is psychotic then there might be a clear link between offending and mental disorder. Offending generally is more complex and can be affected by personality, victimisation (50% of offenders will have been assaulted

themselves), substance misuse, genetic factors, peer group, low intelligence, poor parenting, and social deprivation, as well as mental disorder.

38. She went on to discuss the conditions for detaining mentally disordered offenders (MDOs). There must be a likely or definite mental disorder and making the order must be necessary. She stated that the criteria include whether the person represents a risk to their own health, safety, or welfare, or the safety of others, and that the order would be likely to alleviate symptoms or prevent their deterioration. Impaired decision-making by the person is not a criterion for detention for MDOs. This only applies in civil cases. Therefore the threshold for detaining MDOs is lower than for civil patients. She provided a map showing the forensic network estate across Scotland divided into three regions. Most individuals in forensic inpatient population are known to psychiatric services before they come into contact with forensic services; typically they are male, single, and unemployed.

39. Professor Thomson noted data from a [research project into the long term outcomes of the recovery approach in high security mental health](#) (a 20 year follow up study): 88% left high secure care; over 50% reached the community; symptoms of psychosis generally improved; the recidivism rate was 22.7% with violent recidivism at 7.9%; 70.8% died prematurely; and most suffered stigma and isolation. The outcomes for moving on, improved mental health, and recidivism are good, but not in relation to physical health and stigma.

40. She briefly noted the recommendations in the Barron Review on forensic mental health services and the conclusions of the Scottish Mental Health Law Review, as well as the need to balance EU provisions on mental disorder and UN disability. She noted current issues in forensic mental health including services for women, the Serious Offender Liaison Service (SOLS), and court report provision.



41. She gave an overview of some of the research she had co-authored entitled [\*Understanding the Mental Health Needs of Scotland's Prison Population\*](#) and [\*Exploration of morbidity, suicide and all-cause mortality in a Scottish forensic cohort\*](#) which found that there was a greater prevalence of long term mental health conditions, self-harm, substance abuse, and other factors in Scotland's prison population. This research concluded that current mental health service provision in Scotland's prisons does not adequately address the high levels of need; there is arbitrary variation in resources available to NHS mental health services in each prison which unintentionally leads to inequities experienced by people in certain prisons; but that there is scope and willingness to increase activities from non-health agencies to support wellbeing and positive mental health. She stated that though exacerbated by Covid-19 pressures, fundamental barriers to supporting the mental health of people in prison are longstanding, and that a fundamental change in prison mental healthcare is required as current structures and operational arrangements do not facilitate the development of innovative practice or are too restrictive to enable to the changes required.
42. Professor Thomson explained that this work resulted in six high level recommendations: that a single model of care should be adopted; the prison environment should be more therapeutic; NHS resources should be increased and use relevant factors in allocation models; the funding for clinical psychology and other groups should be increased; prison mental health standards should be adopted; and a formal partnership between the Scottish Prison Service, health and social care, and the third sector should be developed.
43. Lord Colbeck introduced the second speaker of the symposium on the sentencing and mental health panel, Dr Ailbhe O'Loughlin, a senior lecturer at the University of York. Dr O'Loughlin gave an overview of the sentencing guideline, [\*Sentencing offenders with mental disorders, developmental disorders, or neurological impairments\*](#), which entered into force in England and Wales in 2020. She stated that culpability will only be reduced if there is "sufficient

connection between the offender's impairment or disorder and the offending behaviour". The guideline acknowledges the impact of a prison sentence on the offender but states that this can only be taken into account in a "limited" way. She referenced the Scottish Mental Health (Care and Treatment) Act 2003 Code of Practice, which states that a compulsion order and restriction order normally requires a significant link between offence and disorder for the disorder to play a substantial part in determining risk to others.

44. She discussed how Court of Appeal case law in England and Wales has focused on serious cases and on the choice between hospital orders with restrictions and prison sentences plus hospital and limitation directions ('hybrid orders'). Hospital orders with restrictions are comparable to compulsion orders with restrictions in Scotland; hybrid orders are comparable to hospital directions. The legislation does not give much guidance: the criteria are very similar, but the effects are very different. The early cases prioritised hospital orders (e.g. *Birch* (1989)<sup>4</sup>), but then in *Vowles* [2015]<sup>5</sup>, the Court of Appeal seemed to prioritise hybrid orders and punishment over therapeutic interests, and latterly in *Edwards* [2018]<sup>6</sup>, "sound reasons" would be needed to depart from a sentence with a penal element.

45. She noted that courts in England and Wales, in some cases, borrow concepts from the trial stage to determine culpability at sentencing and give less weight to therapeutic interests or welfare. In *Vowles* [2015], the Court of Appeal borrowed causal reasoning from diminished responsibility to determine culpability and risk; in *Graciano* [2015]<sup>7</sup>, *Lundy* [2021]<sup>8</sup>, and *Skana* [2022]<sup>9</sup>, the sentencing judges used the reasoning used in insanity pleas to determine culpability, which was approved by the Court of Appeal. She stated that the problem is that these doctrines are inflexible and tend to overestimate culpability, which risks excluding

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<sup>4</sup> *R v Birch* (1989) 11 Cr.App.R.(S.) 202.

<sup>5</sup> *R v. Vowles and others* [2015] EWCA Crim 45, [2015] 1 W.L.R. 5131, [2015] 2 WLUK 161.

<sup>6</sup> *R v Edwards and others* [2018] EWCA Crim 595.

<sup>7</sup> *R v Graciano* [2015] EWCA Crim 980.

<sup>8</sup> *R v Lundy* [2021] EWCA Crim 1922.

<sup>9</sup> *R v Skana* [2022] EWCA Crim 186.

from the scope of hospital orders some offenders for whom imprisonment would be detrimental.

46. Dr O'Loughlin argued that a more flexible approach, drawing on human rights, is preferable. She discussed some cases as examples. In *R. v. Khan* [2017]<sup>10</sup>, the offences were unrelated to the mental disorder, but the offender presented a very high risk of suicide; the Court of Appeal held that culpability could not be determinative of disposal. She stated that in *R. v. Miller* [2021]<sup>11</sup>, the Court of Appeal considered that a high risk patient could be returned to prison if recalled from life licence; although human rights principles were not invoked, the state's duties to protect individuals from death (Art. 2 ECHR) or from inhuman or degrading treatment or punishment (Art. 3 ECHR) would support this approach. Dr O'Loughlin concluded that this reinforces the need for clarity for sentencing judges on the possible consequences of different orders.

47. Lord Colbeck invited questions for the panel. There was some discussion regarding psychiatric and psychological issues, and their relationship with offending, responsibility, and the diagnosis of mental disorder, and whether the range of psychological difficulties should be given similar weight to psychiatric issues, as well as the differing care needs. The limited number of mental health disposals made each year was raised and it was asked whether the judiciary always have this option open to them when sentencing. The issue of serious delays in getting necessary reports was also raised, together with the potential for increased remand in custody and backdated prison sentences.

48. Dr O'Loughlin stated that figures in England and Wales show that although the number of hospital orders has decreased, there has been a [710% increase](#) in transfers from prison to hospital, suggesting that the number of offenders serving a custodial sentence experiencing deteriorating mental health and/or receiving a

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<sup>10</sup> *R v Khan* [2017] EWCA Crim 174.

<sup>11</sup> *R v Miller* [2021] EWCA Crim 1955.

diagnosis in prison has increased. Anecdotal evidence was given by members of the audience of prison sentences being given due to lack of availability of beds or services in the community. It was also raised that there were issues with providing mental health disposals in the community due to the lack of powers on the part of the supervisor, for example how to deal with non-attendance due to the underlying mental health condition.

### Panel 3: Community sentencing and rehabilitation

49. Summary Sheriff Amel Elfallah, member of the Scottish Sentencing Council and chair of its Communications Committee, chaired the final panel session of the symposium on community sentencing and rehabilitation. Summary Sheriff Elfallah stated that this has been an area of focus for the Council. The Council has undertaken research with sentencers on identifying any gaps or barriers to the provision of community based disposals and to understand what might improve judicial confidence in community-based interventions. The findings of this exercise were published in an issues paper, [Judicial perspectives of community-based disposals](#), in 2021. This was followed up by holding a conference in 2022 with members of the judiciary, lawyers, social workers, victim groups, police, academics, and third sector organisations, exploring the use of and confidence in community disposals. A [report](#) about this event is available on the Council's website.
50. Summary Sheriff Elfallah stated that the Council has also sought to improve public knowledge around community sentences and what they involve. As part of this, the Council has developed a public information video, which was played for the audience. All [videos](#) are available on the Council's website.
51. Summary Sheriff Elfallah introduced the first speaker on the panel, Professor Cyrus Tata, Professor of Law and Criminal Justice at the University of Strathclyde, to talk about sentencing and public confidence research. Professor Tata stated that the fundamental point of his talk was that there is a need for more and better data about patterns of sentencing and, if that data was made available, it would be possible to make a real difference in public confidence in sentencing. Three sets of information are needed in order to do this; currently, only two are available. He stated that, in different types of cases, it is necessary to know: first, what the public think is the right kind of sentence; second, what they perceive are the kinds of sentences the courts typically pass for those cases; and third, which he referred to as crucial, what actually are, in reality, the

kinds of sentences the courts pass in those same sorts of cases. He discussed how there is evidence from other countries that people greatly overestimate the leniency of the courts and that there also appears to be some evidence of overestimation in Scotland. Professor Tata stated that it may be the case that, as in other countries, the courts are in fact far more in line with the kinds of sentences people tend to wish see passed than people believe. He went on to say that the problem in Scotland, however, is that the data on sentencing patterns in different case scenarios is currently too limited to know for sure. Without that data, it is not possible to tell this potential 'good news' story. He noted the Council's concern to improve the quality of data about sentencing.

52. He explained that sentencing often feels like a very easy target of criticism (rather like a 'sitting duck'), whether it is targeted by the media or politicians or others. He stated that, in the past, there have been two strategic responses to such public criticism: to either run about like a 'headless chicken' making poorly thought-out knee-jerk responses (a response common among politicians) or to put 'heads in the sand' (an understandable response from individual practitioners). Professor Tata went on to say that this is why the advent of a body like the Council to look carefully and strategically at sentencing is beneficial. Its work can be undertaken to improve public understanding of sentencing and therefore public confidence.

53. Professor Tata discussed the Council's three statutory objectives and noted that the Council *must* undertake work in fulfilment of these objectives. He focused on the objective in respect of promoting greater awareness and understanding of sentencing policy and practice. He stated that for this to happen, good quality data is needed. Although the Scottish Courts and Tribunals Service and the Scottish Government provide some of the data, there are significant gaps. More good quality data about patterns of sentencing is needed to address those gaps in knowledge. If that data, and thus knowledge were available, then it would be possible to make significant advances in public confidence in sentencing.

54. He referred to some of the research projects that he has been involved in recently: public attitudes research (survey and qualitative), death by driving cases (public and bereaved families), sexual offences (public and victims/survivors), sentence discounting, mitigation and resource research, and research for the Sentencing Guidelines and Information Committee (SGIC), Judicial Council of Ireland on sentencing data collection and analysis. He stated that the SGIC have recently acknowledged that they also do not have the data that they need to do their work.
55. Professor Tata gave some of the figures from research he undertook entitled, [\*Public perceptions of sentencing\*](#) in respect of how confident the public are that the criminal justice system is fair to all. He found that of the cohort (1000 members of the public), 8% were very confident that it is fair, 55% were fairly confident, 23% were not very confident, 12% were not at all confident, and 2% did not know. He provided further figures to show that within those percentages, people with higher education levels tend to have higher confidence in the judicial system, and people that have lower levels of educational attainment have lower levels of confidence; he discussed the possible reasons. He then discussed his research in relation to what people thought about what Scottish courts should be trying to achieve when sentencing in general and when sentencing young people in particular. His research found that while most participants thought that protection of the public was the most important purpose of sentencing in general, they were more likely to say the emphasis should be on rehabilitation when sentencing a young person compared to sentencing an adult.
56. He gave some further data on perceptions of sentencing, namely that 26% thought that sentencing was much too lenient, 30% thought it was a little too lenient, 31% thought it was about right, 2% and 1% thought respectively that it was a little too tough and much too tough, and 10% did not know or did not answer. There is a pervasive sense of leniency. When asked how much knowledge people have about sentencing, they responded as follows: 5% said

they knew a lot, 42% knew a moderate amount, 45% knew a little, and 8% knew nothing at all.

57. Professor Tata concluded by emphasising that three offsets of data need to be triangulated: first, people's preferred sentencing outcomes for different offences and different types of scenarios; second, what their expectation is of sentencing passed by the courts in the same cases; and third, the actual reality of sentencing patterns in those same case scenarios. He stated that data regarding the first two is available, but that it is not possible to get good enough data about the third - normal patterns of sentencing in different case scenarios. He went on to say that if the data was available, it may be found, as in other countries, that people tend to think that sentences are much more lenient than they actually are. Where that data is available, it is possible to provide the actual position with regard to sentencing and dispel that myth. He concluded by stating that more high-quality data about sentencing patterns will provide the solution and have a powerful impact, namely the ability to raise public awareness of what actually happens in sentencing cases and challenge incorrect perceptions.

58. Summary Sheriff Elfallah introduced the second speaker on the panel, Professor Fergus McNeill, Professor of Criminology and Social Work at the University of Glasgow, to talk about the pains and gains of community sentences. Professor McNeill gave an overview of the history of community sentences in Scotland. In 1980, he stated, Scotland had 2,739 probation orders with around 5,000 people in prisons, so in total just under 8,000 people; in 2015, the number of community sentences was 19,000, with 30,000 in the system. He stated that there has been an increase in the number of community sentences but without a reduction in the prison population; Scotland now has one of the largest "total correctional populations" in Europe.

59. He discussed how community sentences are not an exercise in being nice or lenient: these sentences involve suffering. He put forward that, in the imposition



of *all sentences*, parsimony and proportionality need to be key principles. He gave information on the 'Supervisible' project (part of the COST Action (IS1103) on Offender Supervision in Europe (2012-16)), which focused on seeing supervision through the eyes or lens of the supervised. He showed visual representations of their experiences and feelings, which they had produced. Pictures were taken by participants in the study and then those experiences were analysed and discussed. Professor McNeill provided details of the research, which took place in three countries. The major themes raised by the participants were: of feeling constraint; of suspended time or time being lost; of waste of life or that they were the waste of society; and growth/hope, which was the most positive, but with the recognition that growth can also be painful. He stated that the requirement to be supervised engendered pervasive feelings of being judged and stigmatised.

60. Professor McNeill concluded that there is a need to reform "mass supervision".

Decisions about imposing and revoking supervision must be bound by considerations of parsimony and proportionality and no one should be subject to more demanding or intrusive supervision than their offending deserves.

Supervision must be delivered in ways that actively minimise unintended and unnecessary pains both for those subject to supervision and for others affected by it, for example family members.

61. He stated that parsimonious supervision limits punishment at its imposition; there should not be any unnecessary order. He argued that there should not be any unnecessary curtailment of liberty, of autonomy, invasion of privacy, unnecessary disqualification from ordinary citizenship, or interference with other human rights. He went on to argue that the punishment must also be limited by making it end, recognising positive rights to integration/re-integration through and beyond supervision. This requires the restoration of equal access to services to develop human potential and citizenship capabilities, as well as equal access to opportunities, including timely access to legal requalification.

62. Professor McNeill concluded that proportionate supervision involves close consideration of what is the appropriate length of time to be subject to supervision, the depth of interference with personal autonomy created by the conditions applied to orders, the weight of supervision's burdens thus created, tightness of control, and, more generally, degradations that come with supervisee status. These considerations must all be informed by evidence from lived experience and must take account of collateral consequences (i.e. the impacts on family members).
63. He argued that supervision must also be productive to secure the "gains" of community sentencing. It must be in line with human rights principles with respect to dignity, the pursuit of the development of human potential and capacities, advocacy and access to equal opportunities, commitment to fairness and procedural justice, and maximising voluntarism. He concluded that the pursuit of reintegration requires attention to personal rehabilitation, legal rehabilitation, moral rehabilitation, and social rehabilitation.
64. Summary Sheriff Elfallah chaired questions. Areas of discussion included how to address issues within community sentences in terms of quality and resources. It was asked whether people are given the same opportunity to comply or whether they are being set up to fail if they are overburdened with conditions. The point was made that there must be greater national consistency but with a need for local discretion, and that different options should be available for individuals with different circumstances.
65. It was noted by an audience member that financial penalties have dropped across all areas. It was noted by a member of the panel that the era of penal increase is also the era of social welfare reduction. The issue of non-compliance was raised. The point was made while non-compliance is often interpreted as defiance, the social reality behind it may be accumulated trauma on the part of

the offender, system failure in terms of overburdening with conditions, and/or pressure on social work departments and others.

## Conclusion

66. Gavin Dingwall, Head of Policy and Communications at the Sentencing Academy, summed up the day on behalf of the Sentencing Academy. He drew out some of the main themes of the day. He highlighted policy transfer and how the issues discussed at the symposium are international in nature: the issues are the same in Scotland as they are in other jurisdictions for sentencers. Transfer of knowledge is incredibly important and guidelines must be based on thorough research.
67. Lord Matthews then gave the final closing remarks and closed the symposium.

## **Biographies**

### **Lord Matthews, Senator of the College of Justice and Council member**

The Right Hon. Lord Matthews was appointed a judge of the Supreme Courts in 2007, having served as a temporary judge since February 2004. He graduated from the University of Glasgow LL.B (Hons), and was admitted to the Faculty of Advocates in July 1979. He was appointed as a Queen's Counsel in 1992 and practised at the Bar until his appointment as a sheriff in January 1997. He was Standing Junior Counsel to the Department of Employment in Scotland from June 1984 until March 1988, and served as an advocate depute from April 1988 until January 1993.

### **Dr Hannah Graham, senior lecturer in criminology at the University of Stirling and Council member**

Dr Hannah Graham is a senior lecturer in criminology at the Scottish Centre for Crime and Justice Research (SCCJR) at the University of Stirling. Dr Graham has previously worked as a criminologist at the University of Tasmania, Australia. Dr Graham is the author or editor of four books, published internationally, on rehabilitation, criminal justice work, and innovative approaches to justice. She is an editor of the *European Journal of Probation*, and a member of the Community Sanctions and Measures Working Group in the European Society of Criminology.

Dr Graham is a member of the national council for the Scottish Association for the Study of Offending (SASO). In 2017-2018, Dr Graham was part of a team of researchers to conduct an independent review of the Aberdeen Problem Solving Approach, in collaboration with Aberdeen Sheriff Court and community justice partners. This approach specialises in working with people with complex needs and prolific offence histories to offer rehabilitative opportunities and address the underlying causes of their offending. In 2007, she conducted an independent evaluation of a mental health court diversion initiative for the magistrates court and Forensic Mental Health Services in Tasmania, Australia.

### **Dr Nicole Vidal, Council's Principal Research Officer**

Dr Nicole Vidal is a researcher with over ten years of experience in interdisciplinary approaches to research and teaching across social sciences and public health. Dr Vidal has specialist interest working in the area of healthcare disparities in social and public services, specifically marginalisation of particular populations. Prior to joining the Council, she worked as a research fellow and lecturer involved in various projects focusing on the social determinants of health, including increasing access to systems of care, and understanding the issues important for vulnerable groups.

Dr Vidal specialises in qualitative and participatory research methods, with expertise in designing and delivering research studies. She has worked across a range of global settings and has published widely in academic journals. Her interests in the social issues affecting vulnerable groups has led to her involvement in criminal justice and sentencing research with specialist interest on the multidimensional risk factors affecting offenders and victims. As Principal Research Officer with the Council, Dr Vidal leads on preparing and undertaking multi-disciplinary analysis of current Scottish sentencing practice.

### **Dr Jay Gormley, researcher at the University of Glasgow and advisor to the Sentencing Academy**

Dr Jay Gormley, LLB Hons (1<sup>st</sup>), MPhil, PhD is a researcher at the University of Glasgow School of Law and an adviser to the Sentencing Academy. Dr Gormley is an expert in sentencing and socio-legal research, an experienced empirical researcher trained in both advanced qualitative and quantitative methods, and an ONS accredited researcher. Dr Gormley regularly engages with guideline-creating bodies, criminal justice institutions, and policy influences including the Crown Office and Procurator Fiscal Service; UK police forces; Community Justice Scotland; the Centre for Justice Innovation; the Scottish Sentencing Council; the Sentencing Council for England and Wales; the Ministry of Justice; the Sentencing Guidelines

and Information Committee of the Judicial Council (Ireland); and the Justice and Home Affairs Select Committee.

Dr Gormley has peer-reviewed for journals relevant to criminal law and sentencing and for ESRC applications. He has also been an expert witness in the High Court of Justiciary (sitting as an appeal court) whose work was cited by Lady Dorrian in *HM Advocate v B(L)* 2023 SCCR 64. Recently, he worked with the Irish Judicial Council as part of an international team evaluating sentencing data in Ireland and in comparable countries, and with the Sentencing Council for England and Wales on the effectiveness of sentencing. Currently, he is working with the Scottish Sentencing Council on projects exploring public perceptions of, and trends in, sentencing.

**Dr Nina Vaswani, senior research fellow at the Children and Young People's Centre for Justice**

Dr Nina Vaswani is a senior research fellow at the Children and Young People's Centre for Justice where she oversees the centre's research programme. With colleagues, Nina undertook research into the [Glasgow Youth Court](#) in 2022.

Nina's main research interests are the experience and impact of loss, bereavement and trauma in young people and how these experiences interface and shape young people's contact with the justice system. Of particular interest is the overrepresentation of young men in justice settings, and how their exposure to adversity and trauma might shape their developing masculine identities, behaviours and outcomes. As a result, Nina is also interested in institutional and organisational responses to trauma, and the realities of trauma-informed approaches in justice-settings.

**Professor Kathryn Hollingsworth, Professor of Law at Newcastle University**

Kathryn Hollingsworth is Professor of Law at Newcastle University. Her research focuses on children's rights especially in the context of criminal justice, and she has

a particular interest in the theorisation of children's rights. Professor Hollingsworth is also interested in judicial approaches to children's rights, including in judgment-writing and sentence delivery. She has worked with the Judicial College on judicial communication in sentencing and has also delivered training to members of the judiciary in other jurisdictions, including New Zealand, Canada, and Singapore. She was a trustee for Just for Kids Law from 2016-2019 and is on the Advisory Board of the Youth Justice Legal Centre.

### **Lord Colbeck, Senator of the College of Justice and Council member**

A graduate of the University of Strathclyde, Lord Colbeck was admitted as a solicitor in 1988, working for A.C. White in Ayr and Levy & McRae in Glasgow before joining MacRoberts in 1993. He became a partner there in 1997, specialising in commercial and construction disputes, and health and safety and environmental prosecutions, and served as the managing partner from 2011 to 2014. Following his appointment as a part-time sheriff in 2011 and then a full-time sheriff in 2014, he was appointed as the Sheriff Principal of Glasgow and Strathkelvin in 2016. Lord Colbeck was appointed as a judge in the Supreme Courts in May 2023.

### **Professor Lindsay Thomson, Professor of Forensic Psychiatry at the University of Edinburgh**

Professor Lindsay Thomson is Professor of Forensic Psychiatry at the University of Edinburgh and Director of the Forensic Mental Health Services Managed Care Network and the School of Forensic Mental Health. She has been Medical Director of the State Hospitals Board for Scotland since 2007. Professor Thomson's research interests include recovery and outcomes in mentally disordered offenders, risk, the impact of legislative change, and interventions and service design. Research findings are implemented through the Forensic Network. She has a particular interest in teaching and established the School of Forensic Mental Health. The School won the Scottish Public Service Award for Employee Engagement and Skills in 2014.



Professor Thomson was presented with a Lifetime Achievement Award in 2015 at the NHS Education Scotland Medical Directorate Awards. She co-authored the first textbook on psychiatry and the Scottish legal system and legislation: *Mental Health and Scots Law in Practice* which is now in its second edition.

### **Dr Ailbhe O’Loughlin, senior lecturer in law at the University of York**

Dr Ailbhe O’Loughlin is a senior lecturer at York Law School, University of York. Her research focuses on the intersection between mental health law, criminal law, and criminal justice. Dr O’Loughlin’s work on sentencing has been published in the *Criminal Law Review*. In 2022, she wrote an issues paper entitled [Mental Disorder, Disability and Sentencing](#) for the Sentencing Academy and led a literature review entitled [Mental Health and Sentencing](#) for the Scottish Sentencing Council.

### **Summary Sheriff Amel Elfallah, Council Member**

Summary Sheriff Amel Elfallah has been a summary sheriff in Glasgow since October 2021, presiding over a variety of courts. She originally trained and qualified as a solicitor in personal injury litigation, before joining the Crown Office and Procurator Fiscal Service in 2003. She became a senior procurator fiscal depute in 2008 and held that role in various departments within COPFS, undertaking summary, solemn, and appellate criminal work. She also specialised in equalities and training work, and has been a National Institute for Trial Advocacy-accredited advocacy trainer since 2008. She joined the Council in July 2022 and is the Chair of the Council’s Communications Committee.

### **Professor Cyrus Tata, Professor of Law and Criminal Justice at Strathclyde University Law School**

Professor Cyrus Tata, PhD, FRSA is Professor of Law and Criminal Justice at the University of Strathclyde, Scotland. Professor Tata has conducted single and multi-jurisdictions studies on a range of sentencing and criminal justice issues including: the impact of legal aid reforms on case outcomes; plea decision-making and negotiation; executive release from prison; pre-sentence reports and mitigation practices; sentencing consistency; and the role of emotion in criminal proceedings. He has conducted research into public perceptions of and attitudes to: sentencing; sex offence cases; and public views of and bereaved families' experiences of death by driving cases. He is currently working (with Dr Jay Gormley) on research into public perceptions and attitudes to sentence discounting in respect of guilty pleas. Recently he was commissioned by the Irish Judicial Council to lead an international team evaluating sentencing data in Ireland and in comparable countries.

Professor Tata is founder and chair of the *European Group on Sentencing and Penal Decision-Making* (a network of some 130 academic, policy and practitioner members in over 25 countries). Regularly invited to speak to judicial, policy and practice audiences around the world, he has served as adviser to governments and judiciaries in several countries. His recent academic works on sentencing include: *Sentencing: a Social Process – Re-Thinking Research & Policy* (Palgrave Springer, 2020); and *Criminal Justice and The Ideal Defendant in the Making of Remorse and Responsibility* (with S Field) (Hart Bloomsbury, 2023).

### **Professor Fergus McNeill, Professor of Criminology and Social Work at the University of Glasgow**

Fergus McNeill is Professor of Criminology and Social Work at the University of Glasgow where he works in the [Scottish Centre for Crime and Justice Research](#) and in Sociology. Prior to becoming an academic in 1998, Professor McNeill worked for a decade in residential drug rehabilitation and as a criminal justice social worker. His

many research projects and publications have examined institutions, cultures and practices of punishment, rehabilitation and reintegration, particularly with community contexts.

Between 2012-16, he chaired the EU-funded COST Action on Offender Supervision in Europe, a major research network that spanned 23 countries and involved over 50 researchers. More recently, between 2017-21, he led '[Distant Voices: Coming Home](#)', a multi-partner Economic and Social Research Council/Arts and Humanities Research Council project which explored re-integration after punishment through creative practices and research methods. His book, '[Pervasive Punishment: Making Sense of Mass Supervision](#)' was the winner of the European Society of Criminology's 2021 Book Prize.

### **Gavin Dingwall, Head of Policy and Communications at the Sentencing Academy**

Gavin Dingwall is Head of Policy and Communications at the Sentencing Academy and holds visiting academic positions at King's College London and the University of Birmingham. He was Professor of Criminal Justice Policy at De Montfort University between 2012 and 2022.

He has published extensively on criminal justice, criminology, criminal law and criminal procedure and evidence. His work includes the following books: *Minority Ethnic Prisoners and the Covid-19 Lockdown: Issues, Impacts and Implications* (with Avril Brandon, 2022); *Criminal Justice and the Pursuit of Truth* (with Tim Hillier, 2021); *Blamestorming, Blamemongers and Scapegoats: Allocating Blame in the Criminal Justice Process* (with Tim Hillier, 2015); *Alcohol and Crime* (2006); *Crime and Conflict in the Countryside* (ed with Susan R. Moody); and *Diversion in the Criminal Process* (with Chris Harding, 1998).

## Hosts



The [Scottish Sentencing Council](#) was established to promote consistency in sentencing across Scotland, primarily through the development of [sentencing guidelines](#), to assist in the development of sentencing policy, and to promote greater awareness and understanding of sentencing practice.

The three themes of the research symposium are key aspects of our current work programme: we are currently monitoring the operation and impacts of the [Sentencing Young People guideline](#); we are carrying out research and engagement to support awareness-raising and other activity in relation to the sentencing of those with mental health and welfare issues, such as our [Mental Health and Sentencing Literature Review](#) (2022), and to assist with consideration of a guideline in this area; and we have been exploring issues relating to community sentencing, including judicial attitudes and stakeholder views, such as our report on our [Community Sentencing Stakeholder Event](#) (2022/23). Full details of our [research](#), [publications](#) and [consultations](#) are available on our website.

## SENTENCING ACADEMY

The [Sentencing Academy](#) is a research and engagement charitable incorporated organisation dedicated to developing understanding of sentencing in England and Wales and informing public debate. It promotes an evidence-based approach to sentencing and encourages effective sentencing practices that reduce re-offending, provide justice to victims, and promote public confidence.

It commissions and collaborates with a diverse range of specialist researchers conducting evaluative, comparative and explorative [research articles and reports](#) covering key topics in the area of sentencing in England and Wales.



The [University of Glasgow](#) is a world-changing university which produces research of global and national importance. Criminal law has been at the heart of legal scholarship throughout the history of the [University of Glasgow's School of Law](#). Its current research in the field of criminal law is carried out by a significant [team of academics](#) and research students. Policy engagement is an important element of the team's work. Details of current and completed [research projects](#) and consultations can be found on the [policy engagement](#) page.



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